IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 12588 of 2004

Between:

S.Narayana Reddy, S/o.S.Gangi Reddy,
R/o.B-413, Shanthibagh Apartments, 7-1-3,
Begumpet, Hyderabad.

..... PETITIONER

AND

1. The Secretary, Government of A.P., Industries & Commerce

Department, Secretariat, Hyderabad.
2. The Director of Mines & Geology, B.R.K.R.Buildings, 8th floor,
Tank Bund Road, Hyderabad.
3. The Assistant Director, of Mines & Geology, Ongole,
Prakasam Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order or writ one in the nature of writ of Mandamus, declaring the action of the respondents in not executing the lease deed in pursuance of grant of Mining Lease by the Government by G.O.Ms.No.326, Industries & Commerce (MI) Department, dt.19-06-2000 for Mining quartz over an extent of 31.02 in Sy.No.210/7 (p), 210/8 & 210/9 of Siddavaram village, K.K. Metla Mandal, Prakasam District as arbitrary, illegal and unjust, unconstitutional being violating of natural justice, consequently direct the respondent to execute the lease deed.

Counsel for the Petitioner: SMT.N.SHOBA

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

The Court made the following:

O R D E R:

Heard Smt.N.Shobha, learned counsel appearing for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

The petitioner herein, who has been granted a lease by the first respondent-Government in pursuance of the orders passed in G.O.Ms.No.326, Industries & Commerce (M.II) Department, dated 19.06.2000, filed this writ petition *inter alia,* seeking a Mandamus declaring the action of the respondents in not executing the lease deed in pursuance thereof, as illegal and for a further direction to execute the same.

The case of the petitioner, in brief, is that in pursuance of an application filed by him on 30.09.1998, before the respondents for grant of mining lease for quartz in Sy.Nos.210/7P, 210/8 and 210/9 to an extent of Ac.42.65 cents situated at Siddavaram Village, K.K.Metla Mandal of Prakasham District for a period of 20 years, the third respondent-Assistant Director of Mines and Geology, issued a notice to the petitioner on 16.11.1998 for the purpose of conducting inspection on 23.11.1998. Accordingly, the inspection was duly made and survey was also conducted by the said authority on the same day and the petitioner's application was forwarded to the Mandal

Revenue Officer as per proceedings dated 30.09.1998 for classification and also for issuance of no objection certificate. Following the same, the Mandal Revenue Officer, Konkanametla, has issued a no objection certificate to an extent of Ac.34.77 cents. Thereafter, the petitioner's application was recommended to the second respondent – Director of Mines and Geology, for grant of mining lease, who in turn sent the same to the Government on 13.05.1999. Following the same, the first respondent issued a memo-dated 17.12.1999 to the effect that the Government has proposed to grant mining lease for quartz subject to submission of approval from mining plan. Consequently, the mining plan was also approved after due enquiry by the Indian Bureau of Mines and Geology and the same was submitted on 15.04.2000. Thus, ultimately, the first respondent has issued proceedings in G.O.Ms.No.326, Industries & Commerce (M.II) Department, dated 19.06.2000, granting lease for a period of 20 years. However, in spite of such orders, which were passed by the first respondent granting mining lease, the lease deed, which normally should be executed within a period of six months, was not being followed up and no attempt has been made by the authorities in this regard. It was also submitted that the competent authority to execute the lease deed is the third respondent herein, who as per letter dated 08.08.2000, asked the petitioner to submit approved mining plan with relevant stamp papers, affidavit in lieu of Mineral Clearance Certificate, Income Tax Clearance Certificate, and a deposit of Rs.10,000/- towards security. Accordingly, the petitioner has complied with all the said formalities on 08.09.2000. However, in spite of such compliance, no deed is being executed. Since the initial period of six months was lapsing, the petitioner submitted an application to the first respondent on 06.01.2001 for extension of time and the same was duly extended. The second respondent through proceedings 04.06.2001, informed the petitioner to produce Mineral Revenue Clearance Certificate before the third respondent. It is submitted by the petitioner that having produced the certificates earlier, there is no necessity to file the same once again. The petitioner had obtained the said certificate on 03.08.2001 and the

same was submitted before the second respondent on 17.10.2001, but in spite of the same, no lease deed was executed in favour of the petitioner. Surprisingly, the first respondent has issued proceedings dated 07.03.2002 purported to be under Rule-26 of Mineral Concession Rules, 1960 (for short "the Rules"), to the petitioner calling upon him to show-cause as to why the lease granted to him be revoked due to mistake of fact i.e., when there is a prior application pending for the same area. It is submitted that the inaction on the part of the respondents is totally without any justification mush less, power and authority, as contemplated under the law. Further, especially in the absence of any challenge made by such other applicant, in regard to the orders issued in G.O.Ms.No.326, Industries & Commerce (M.II) Department, dated 19.06.2000, it is not open for the first respondent to reopen the proceedings. Hence, the writ petition.

In the counter-affidavit filed on behalf of the respondents herein, it is contended that the proposed action is only in terms of the powers conferred under Rule 26(1) of Mineral Concession Rules, 1960. It is also submitted that already an application is pending, which was filed by Sri Syed Raheem on 24.01.1998 itself i.e., much prior to the date of the application of the petitioner, which was on 30.09.1998. Further, it was pointed out that in regard to the said application of Syed Raheem, a proposal was made by the second respondent on 08.01.1999 to the Government for rejection, since he did not turn up for survey and inspection, a show cause notice was issued to him on 01.02.1999 for rejection of his application. However, it is pointed out that even though such an application was pending, the same was not brought to its notice, and therefore, the second respondent submitted a proposal for grant of mining lease. Further, the show-cause notice was issued on 09.09.1999 to Syed Raheem, as to why his application should not be rejected as he did not attend the inspection, to which the said Syed Raheem submitted a reply on 16-10-1999, with a request to provide him one more opportunity for inspection and survey, which was acceded to by the Government on 29-10-1999

giving him one more opportunity. There is no dispute with regard to the fact that the petitioner in terms of notice dated 17-12-1999 submitted the mining plan and ultimately the G.O.Ms.No.326, Industries & Commerce (M.II) Department, dated 19-06-2000 was issued. It is only after the said factum of noticing the pendency of another application, the second respondent requested the first respondent on 22-12-2001 to revoke the lease granted in favour of the petitioner, therefore, the first respondent has issued a notice dated 07-03-2002 to the petitioner as to why the said lease should not be revoked. In view of the same, it cannot be said that there is any illegality in the impugned proceedings and instead of approaching the first respondent, the petitioner has come up with the present writ petition. Further, it was also pointed out that having regard to the pendency of one more application, the petitioner's case could not have been considered on its own. In the circumstances, it was submitted that the petitioner cannot make any grievance and he cannot rely on a lease, which was the result of a mistake of fact, and the same was being corrected by the first respondent.

The learned counsel Smt.N.Shobha, appearing on behalf of the petitioner, strenuously contended that in the absence of a proper challenge by any such rival applicant though his application may be prior, cannot be reviewed or reconsidered or reopened at the instance of the first respondent on its own and further it is also pointed out that Rule 26(1) of the Rules, which was sought to be relied on by the first respondent, has no application and hence, the entire inaction on the part of the respondents is wholly unsustainable.

The learned Government pleader appearing for Mines and Geology sought to sustain the impugned action mainly on the ground that the petitioner's application could not have been processed without considering the application filed earlier by another applicant, which was pending and it is only due to certain lapses on the part of the respondents and further, it was not noticed at the time of considering the petitioner's application. Therefore, there is a clear mistake of fact, which is only being sought to be corrected.

Considering the submissions made and also on perusal of the entire material on record, the only question, which crops up for consideration is as to why in the facts and circumstances the first respondent is entitled to revoke the lease granted in favour of the petitioner on the ground of alleged mistake of fact.

There is no dispute to the aforesaid facts. As mentioned above, the petitioner's application, which was filed on 30-09-1998 was duly processed and after due survey, inspection and compliance of all the requirements, as sought for, at different times and ultimately, the first respondent has issued the aforesaid G.O.Ms.No.326, Industries & Commerce (M.II) Department, dated 19-06-2000, granting lease in favour of the petitioner herein. In spite of issuance of the lease, no final lease deed was being executed by the third respondent, though the petitioner has already complied with all the requirements, as sought for by the said authority subsequent to issuance of the aforesaid lease. The main defence as sought on behalf of the respondents is that it is only due to the fact that there was an application already pending consideration, which was filed by one Syed Raheem, and the same having been brought to the notice though at a later stage, the show-cause notice has been issued for revocation of the lease, which was granted in favour of the petitioner. It is to be noticed that there cannot be much dispute as to the application filed by the said Syed Raheem on 24-01-1998. However, on the facts, as submitted by the respondents herein, the said Syed Raheem was not so serious in pursuing his application and there have been lapses on his part. He did not attend the survey as per the notice issued in pursuance of the application filed by him and therefore, notices have been issued to him, on more than one occasion, as to why his application should not be rejected. It is only at a very belated stage and that too after a long lapse of time, the said Syed Raheem, requested the authorities concerned to give one more opportunity, which was acceded to and which ultimately has rekindled the hopes of the said Syed Raheem, for considering his case for grant of lease and which also has given rise to the issuance

of a notice to the petitioner herein for revocation of the lease, which was already granted. Admittedly, the said Syed Raheem did not make any challenge with regard to the proceedings issuing the lease in favour of the petitioner in G.O.Ms.No.326, Industries & Commerce (M.II) Department, dated 19-06-2000. No attempt has been made to pursue his application seriously at different points of times. Except stating that he wants one more opportunity, no other valid reason has also been pointed out seeking for providing such an opportunity. Admittedly, there are serious lapses and latches on the part of the said Syed Raheem. Be that as it may, the only source under which the notice has been issued to the petitioner for revocation of the lease granted to him is under Rule 56 of the Mineral Concession Rules, 1960, which reads as follows:

> **"Power to rectify apparent mistakes:-** Any clerical or arithmetical mistake in any order passed by the government or any other authority or officer under these rules and any error arising therein from accidental slip or omission may, within two years from the date of the order, be corrected by the government authority or officer, as the case may be:
>
> Provided that no order prejudicial to any person shall be passed unless he has been given a reasonable opportunity for stating his case."

On a bare reading of the said Rule, which is quite apparent that the power conferred under the aforesaid Rule is not in any way akin to any appeal, revision or review as such. It is only an incidental power, which is conferred on the authorities to correct any clerical or arithmetical mistake in any order passed by the authority. It can also be treated on par with Section 152 of the Code of Civil Procedure and it is to be noticed that similar such Rule as found in Rule 16 of the Land Reforms (Ceiling on Agricultural Holdings
Act) 1973 has also come up for consideration. In a judgment of a Division Bench of this Court, it is held that the scope of such provision is very limited and cannot extend beyond its own prescription and it

may not be converted into and sought for appeal, revision or review as held in *AUTHORISED OFFICER LAND REFORMS TRIBUNAL, KAKINADA Vs. A.SREERAMACHANDRA PRABHU.* In view of the same, it is to be seen that advertently in this case, there is no proceedings initiated against the said Syed Raheem in any manner, as contemplated under law either by way of appeal, or revision, or review and it is only the first respondent on *suo motu* powers there-under, sought to revoke the lease, which has been granted. As long as the orders of issuance of lease have not been challenged, it is to be held that the said orders have become final, conclusive and binding in view of absence of any such rival applicant irrespective of the fact that he is a prior applicant. However, it is also to be held that in the facts of this case, the questions of invoking Rule 56 of the aforesaid Rules does not arise nor would it entail the first respondent to revocation also which is a quite serious one effecting the substantive rights of the parties. As long as there is no specific power conferred in the statue, it is not open for the respondent authorities herein, to invoke such incidental power under Rule 56 of the aforesaid Rules.

In the circumstances, it is to be held that Rule 56 is not applicable to the facts of the case nor confer any such power to revoke, having thus held and it is also to be noticed that there is absolutely no other justifying reason on the part of the respondents herein, to deny the execution of the lease deed, more so, it was issued as long back as on 19-06-2000.

The writ petition is, accordingly, allowed as prayed for. No costs.

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-12-2004

Lrkm.

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the twenty ninth day of December two thousand and Four.

REGISTRAR

To

1. The Secretary, Government of A.P., Industries & Commerce

Department, Secretariat, Hyderabad.
2. The Director of Mines & Geology, B.R.K.R.Buildings, 8th floor,
Tank Bund Road, Hyderabad.
3. The Assistant Director, of Mines & Geology, Ongole,
Prakasam District.

4. 2CCs to the Government Pleader for Industries and Commerce, High

Court of A.P., High Court Buildings, Hyderabad.

5. 2CD copies.